

§ 26.112a

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or tax under this section, the appropriate TTB officer shall notify the Secretary and the revenue agent that deferred payment may be resumed.

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(Aug. 16, 1954, Ch. 736, 68A Stat. 775, (26 U.S.C. 6301); June 29, 1956, Ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

[T.D. ATF-277, 53 FR 45268, Nov. 9, 1988, as amended by T.D. ATF-301, 55 FR 47658, Nov. 14, 1990; T.D. ATF-365, 60 FR 33674, June 28, 1995; T.D. ATF-451, 66 FR 21669, May 1, 2001. Redesignated and amended by T.D. ATF-459, 66 FR 38550, 38551, July 25, 2001; T.D. TTB-41, 71 FR 5604, Feb. 2, 2006]

§ 26.112a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and parts 19 and 27 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and parts 24 and 27 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 25 and 27 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of such taxes during the succeeding calendar year. Payment by cash, check, or money order, of distilled spirits taxes, wine taxes, or beer taxes, as described in § 26.112, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is to be summarized separately for distilled spirits taxes, wine taxes, or beer taxes, and is defined as the gross tax liability on each type of product for which taxes are paid in accordance with this subpart, taxable withdrawals from premises in the United States, and importation during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises at which tax liabilities are incurred by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words “at least 80 percent” shall be replaced by the words “more than 50 percent” in each place it appears in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate tax return, for each premises from which distilled spirits, wine, or beer is withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and parts 19 and 27 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and parts 24 and 27 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 25 and 27 of this chapter during the previous calendar year, shall notify, in writing, the appropriate TTB officer. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer’s bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account

by no later than the close of business on the last day for filing the return, prescribed in § 26.112 or § 26.113. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and parts 19 and 27 of this chapter, less than five million dollars in wine taxes combining tax liabilities incurred under this part and parts 24 and 27 of this chapter, or less than five million dollars in beer taxes combining tax liabilities incurred under this part and parts 25 and 27 of this chapter during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 26.112. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the appropriate TTB officer by attaching a written notification to the tax return, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the tax return, information about remitting the tax for that return by EFT and shall file the return with the appropriate TTB officer.

(2) Remittances shall be considered as made when the taxpayment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to make a taxpayment by EFT.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or

6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the appropriate TTB officer will issue to the taxpayer an TTB Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

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(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

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§ 26.113 Returns for prepayment of taxes.

(a) *General.* If a proprietor does not have an approved bond covering the deferred payment of taxes, or if such bond is in an insufficient penal sum, or if there is default by him in any payment of tax under this subpart, liquors shall not be released from bonded storage before the proprietor has paid the tax thereon.

(b) *Remittances.* Remittances submitted to cover prepayment of taxes under this subpart shall be in cash, United States postal money orders, certified checks, or cashier's checks.

(c) *Distilled spirits.* In all cases where taxes equal to the taxes imposed in the United States by 26 U.S.C. 5001(a)(1) are to be paid before distilled spirits may be released for shipment, the proprietor shall pay such taxes pursuant to a return on TTB Form 5000.25, as prescribed in § 26.81.

(d) *Wine.* In all cases where taxes equal to the taxes imposed in the United States by 26 U.S.C. 5041, are to